1946. K File No. O. Medical 46

Legal Dept-

A BRANCH

Subject:— Opinions under the Bombay Medical Act 1912

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Office of the R.L.A.

In his letter dated the 15th December 1944 the Secretary to Government, General Department, Sind, states that Bill No.IX of 1944 (a Bill to provide for the registration of Medical Practitioners) which was reserved for the consideration of the Governor General received the assent of the Governor General on 1st December 1944, and that it will be published as Sind Act XIX of 1944. He however, requested that Government of Bombay may be moved to carry out the necessary amendments to the Bombay Medical Act, 1912, so that the Government of Sind may proceed with the new Legislation. According to the opinion of the R.L.A., Sind, the Government of Bombay should undertake the following amendments to the Bombay Medical Act, 1912, namely:-

(1) that sub-section (2) of section 1 of the Act may be amended so as to continue the operation of the Act to the province of Bombay instead of to Bombay Presidency;

(2) that since Sind will have its own Medical Council, Bombay Government may like to reduce the strength of the Council, and if so, amendment f section 2(2) would be necessary;

(3) that unless the Sind Council is constituted after the present term of the Bombay Medical Council expires, the members from Sind on the Bombay Medical Council should ordinarily vacate their seats, and this could be done by amending the Act;

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(4) since the register maintained under the Act may require to be amended by removal of names therefrom of the Sind practitioners, amendment of section 9 may be necessary.

Amendment (1) - Section 2 of the Sind Laws Regulation, 1936, provided that all enactments, AND ALL NOTIFICATIONS, ORDER, Schemes, rules, forms, bue-laws or other documents made or prescried under enactments which immediately before the coming into force of this Regulation were in force in or prescirbed for, the Division of Sind as part of the Presidency of Bombay, and which contained any reference to any of the authorities, territories or Gazettes mentioned in column 1 of the First Schedule hereto, shall in their application to the Province of Sind be construed as if all such references were references to the authorities, territories or Gazettes respectively mentioned opposite thereto in column 2 of that Schedule. Consequently in view of entry 4 of Schedule 1 read with section 2 of the Sind Laws Regulations, reference to the "Bombay Presidency" in section 1(2) of the Bombay Medical Act, 1912, would, in its application to the Privince of Sind, be construed as "the Province of Sind". In view of this legal position, it does not appear necessary to amend section 1(2) of the Bombay Medical Act, 1912. Moreover, in view of section 24 of the New Sind Medical Act, 1943, the Bombay Medical Act, 1912, in its application to Sind will be deemed to be repealed.

Amendment (2) - Clause (b) of sub-section 2 does not prescribe that one of the members nominated by Government shall be the representative of the Government of Sind. It is only as a matter of convention that out of the six members nominated by Government, one is a representative

of the Government of Sind. In the General Department note at page 41 ante, it is stated thus:-

> "the Board of Indian Systems of Medicine whose jurisdiction extends only over the Province of Bombay is also constituted of thirteen members. There is no need, therefore, to reduce the strength of the Bombay Medical Council even after that body ceases to exercise jurisdiction over the Sind Province."

Since there is no statutory provision that one of the six members nominated by Government should be a representative of the Government of Sind, and since it is not proposed to alter the constitution of the Medical Council, no amendment of sub-section (2) of section 2 appears necessary.

Amendment (3) - Dr. R.A. Amesur is the present nominee of the Sind Government. It is proposed that Dr. Amesur may be asked to resign (vide section 3(2)). Consequently no amendment of section 2(2) would be necessary.

Amendment (4) - Attention is invited to the provisions of sub-sections (1), (1-a) and (2) of section 7 and section 20 read with the Schedule, from which it will be evident that a medical practitioner, if he possesses the requisite registrable qualifications, can have his name registered in more than one Province. The view of the B.L.A., Sind is not correct.

O.C. Sd/-
4/7/46

Remembrancer of Legal Affairs.

U.R. to G.D. No. 4849, dated the 6th July 1946.

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